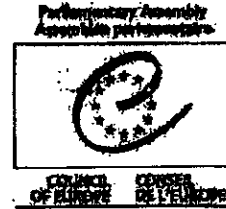


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**Committee on Legal Affairs and Human Rights**

**Alleged secret detentions in Council of Europe member states**

**Information Memorandum II**

Rapporteur: Mr Dick Marty, Switzerland, Alliance of Liberals and Democrats for Europe

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F - 67075 Strasbourg Cedex, tel: +33 3 88 41 20 00, fax: +33 3 88 41 27 02, <http://assembly.coe.int>, e-mail: [assembly@coe.int](mailto:assembly@coe.int)

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## A. Introduction

1. First of all, it is necessary to set this work in context in terms of both facts and chronology (the latter being of some significance in this affair). I would stress that the allegations that are now receiving media coverage worldwide were already known and were condemned by the Council of Europe Parliamentary Assembly in a report on the "Lawfulness of detentions by the United States in Guantánamo Bay" presented by my colleague Kevin McNamara, to which I shall refer in this memorandum<sup>1</sup>. In his report he condemned the illegal practice of "extraordinary rendition" and recommended that Council of Europe member states "ensure that their territory and facilities [were] not used in connection with practices of secret detention or rendition in possible violation of international human rights law"<sup>2</sup>.

2. At the time, the issue did not elicit the same media coverage as it is now receiving. We may well ask why it is only now that the allegations concerning secret detention centres in Europe are triggering a proper debate and public shock and indignation at the reports of ill-treatment and even torture in this connection. In countries that pride themselves in being long-standing democracies that protect human rights, the revelation of these allegations should have sparked off reactions and categorical condemnation several months ago, and yet this was not the case, with a few exceptions, such as the article by the writer and journalist Stephen Grey ("United States: trade in torture", *Le Monde diplomatique*, April 2005) and the articles by Guido Olimpio in the *Corriere della Sera* and his book *Operazione Hotel California* (Feltrinelli, October 2005).

3. I am particularly struck by the fact that it is in the United States that the discussions first really took off. Following an article in *The Washington Post* and a report by *Human Rights Watch* (HRW) published in early November, the international media have reported allegations that the CIA is or was running a system of secret prisons, including prisons in certain "central and east European democracies". Numerous aircraft chartered by the CIA allegedly flew over, to and from European territory (benefiting, therefore, from airport facilities in Council of Europe member states) in order to transport suspects, completely illegally, to these secret centres.

4. Whereas *The Washington Post* did not mention any countries by name (further to an agreement entered into with the United States Government, which, to my mind, suggests that the reports are true), HRW expressly mentioned Poland and Romania. The press reports also quote denials by officials from Poland<sup>3</sup> and Romania, but also Latvia, the Czech Republic, Georgia, Armenia and Bulgaria.

5. Since then, recent further information has extended the list of countries allegedly concerned by the existence of secret detention centres. According to a fax from the Egyptian Ministry of European Affairs to the Egyptian Embassy in London, intercepted by the Swiss intelligence services, such centres existed in Romania, Bulgaria, Macedonia, Kosovo and Ukraine.

6. On 5 December 2005 ABC reported, in turn, the existence of secret prisons in Poland and Romania that had apparently been closed following *The Washington Post's* revelations. According to ABC, eleven suspects detained in these centres were then transferred to CIA facilities in North Africa. They were allegedly submitted to the harshest interrogation techniques (so-called "enhanced interrogation techniques"). I would point out that the ABC article confirming the use of secret detention camps in Poland and Romania by the CIA was available on the Internet for only a very short time before being withdrawn. This strikes me as a telling indication of the pressure put on the media in this affair (in this particular case, the pressure was apparently brought to bear direct by the CIA).

<sup>1</sup> See Doc.10497, report by the Committee on Legal Affairs and Human Rights (Rapporteur: McNamara) and Resolution 1433 (2005), on the *lawfulness of detentions by the United States in Guantánamo Bay*.

<sup>2</sup> Above-mentioned Resolution 1433 (2005), § 10.vii.

<sup>3</sup> A denial that was firmly reiterated by President Aleksander Kwasniewski on 7 December 2005.

7. It would seem from confidential contacts that the information revealed by *The Washington Post*, HRW and ABC came from different sources, probably all well-informed official sources. This is clearly a factor that adds to the credibility of the allegations, since the media concerned have not simply taken information from one another.

8. In an interview broadcast by the American channel ABC on 29 November 2005, the Director of the United States Central Intelligence Agency, Porter Goss, did not deny the existence of CIA secret prisons in various parts of the world where people suspected of terrorism were held. He did, however, categorically deny that the United States used torture, while refusing to pass judgment on certain interrogation techniques used by its services.

9. On 5 December 2005, Condoleezza Rice, the American Secretary of State, made a statement addressed to Europeans in which she did not, at any point, deny the existence of the alleged centres, or of the flights transporting detainees, but reaffirmed the need to resort to "extraordinary renditions" in the context of efforts to counter terrorism. The only thing that Ms Rice categorically denied was the use of torture.

10. On 3 November Mr Friso Roscam Abbing, spokesman for Franco Frattini, Vice-President of the European Commission and Commissioner for Justice, Freedom and Security, said that the Commission would be seeking further information, on the grounds that such secret detention centres would be a violation of the founding principles of the European Union. On 4 November he said that the Commission had no reason to doubt the denials by the Polish and Romanian Governments. On 14 November Mr Frattini told the European Parliament that he welcomed the investigation initiated by the Council of Europe and that his departments would be following it closely. On 7 December 2005 Mr Frattini wrote to his colleagues Jacques Barrot and Benita Ferrero-Waldner asking them to support the requests the Committee on Legal Affairs and Human Rights of the Council of Europe Parliamentary Assembly had submitted to Eurocontrol and the European Union Satellite Centre (EUSC). On 28 November 2005 the British Foreign Secretary, Jack Straw, asked the American authorities, on behalf of the European Union, for explanations of the alleged stopovers in Europe of aircraft chartered by the CIA.

11. On 4 November Alvaro Gil-Robles, Council of Europe Commissioner for Human Rights, called for an investigation into the allegations.

12. The same day, the President of the Parliamentary Assembly, René van der Linden, asked the Committee on Legal Affairs and Human Rights, in a press release, to look into the allegations, stating that, if such detention centres did in fact exist, it would be a violation of the principles of both the European Convention on Human Rights and the European Convention for the Prevention of Torture.

13. Mention should also be made of the stand taken by the United Nations High Commissioner for Human Rights, Ms Louise Arbour, who said in an article in *Le Monde* published on 7 December 2005 that secret detention was a form of torture in itself, for the person detained, who was at the mercy of the detaining authorities, and, worse still, for the families, who were faced with a situation that amounted to that of a missing person.

14. On 15 December the European Parliament agreed, in principle, to set up a temporary committee to investigate the alleged illegal transfer of detainees and the suspected existence of secret CIA detention facilities in the European Union and in candidate countries. On 12 January 2006 the European parliamentarians decided to go ahead and set up such a committee. On 18 January the European Parliament, sitting in Strasbourg, approved the mandate and membership suggested by the Conference of Presidents of the Political Groups for its temporary 46-member committee, which is to investigate the allegations of CIA prisons in Europe where persons suspected of terrorism have allegedly been detained and tortured. I am highly satisfied to note that the work of this committee explicitly reflects a continued desire to co-operate fully with our investigation.

15. In November and December 2005 the Committee on Legal Affairs and Human Rights was particularly active in connection with this affair. At its meeting on 7 November 2005, following President van der Linden's request, it discussed the matter, including the possibility of inviting the Secretary General of the Council of Europe to ask all Contracting Parties to the European Convention on Human Rights for information about the allegations, in accordance with the procedure provided for in Article 52 of the Convention. At the next meeting, on 22 November, I presented the information I had been able to obtain and my preliminary conclusions<sup>4</sup>. At its meeting on 13 December 2005 the committee:

- appointed me Rapporteur
- decided to ask the European Commission for Democracy through Law (Venice Commission) to prepare a legal opinion assessing the legality of secret detention in the light of Council of Europe member states' international obligations, in particular the European Convention on Human Rights and the European Convention for the Prevention of Torture, and expressed the wish that this opinion be submitted as soon as possible;
- instructed its Chair to submit to the Bureau a request for an urgent procedure debate on the allegations of secret detention in Council of Europe member states at the January 2006 part-session of the Assembly;
- extended the Rapporteur's mandate to visit the headquarters of the European institutions and make fact-finding visits to certain Council of Europe member states if he deemed it necessary;
- was informed by the Deputy Secretary General of the initiatives taken by the Secretary General in accordance with Article 52 of the ECHR.

16. On behalf of the Committee on Legal Affairs and Human Rights, I submitted a request to the Bureau for a debate under urgent procedure on the allegations of secret detention in Council of Europe member states at the January 2006 part-session of the Assembly. I was informed that, as the deadline for States' replies under the procedure set in motion under Article 52 ECHR was not until 21 February, the Assembly Bureau had decided, at its meeting on 9 January 2006, to suggest holding a current affairs debate, ie a debate without a report, which nevertheless leaves me free to submit this information memorandum to the Committee on Legal Affairs and Human Rights.

#### **B. Steps taken to date**

17. Following the Committee's meeting on 7 November, on 14 November 2005 requests for information were sent to the Polish and Romanian delegations to the Council of Europe Parliamentary Assembly and to the United States Permanent Observer to the Council of Europe.

18. On 21 November 2005, the Secretary General of the Council of Europe sent a request for information to the States Parties to the European Convention on Human Rights, in accordance with the procedure provided for in Article 52, asking them to reply by 21 February 2006 (see Appendix IV).

19. Letters were sent to the EU Satellite Centre and Eurocontrol on 29 November 2005, asking them to provide technical assistance with the preparation of the prospective report by forwarding certain information concerning flights and satellite pictures of certain sites, taken on different dates.

<sup>4</sup> See document AS/Jur (2005) 52 rev 2, Information Memorandum presented by the Rapporteur. See also the statement on *alleged secret detention centres in Council of Europe member States* adopted by the Assembly's Standing Committee at its meeting in Bucharest on 25 November 2005 (Synopsis No.2005/130).

20. The Venice Commission, for its part, was informed at its meeting on 15 December 2005 of the request from the Committee on Legal Affairs and Human Rights for an opinion. It decided to instruct several of its members to start work on the matter (see Appendix III).

21. In a letter dated 10 January 2006, the Secretary of the Venice Commission informed me that work was already under way. The Venice Commission has instructed a working group comprising six eminent experts to draft an opinion for approval at its next plenary session, on 17 and 18 March 2006.

22. A questionnaire was forwarded to all the leaders of national delegations to the Parliamentary Assembly on 19 December 2005 so that the parliamentarians would put questions to their governments within their own parliaments, making use of their twofold mandate as national parliamentarians and members of the Assembly (see Appendix II).

23. On 5 January 2006, I met the prosecutor responsible for the Abu Omar case, Mr Armando Spataro, in Milan. He told me about one of the most comprehensive judicial inquiries so far carried out in Europe into a kidnapping carried out as part of an "extraordinary rendition" operation by the services of a foreign country.

24. I also had various meetings with NGO representatives and investigative journalists specialising in terrorism.

### **C. Criminal investigations and other reactions**

#### **a. Council of Europe member countries**

##### *i. Overview*

25. In two countries (Italy and Germany) judicial investigations have begun into "abduction" of persons subsequently transported to Guantánamo, Afghanistan and other detention centres by means of aircraft belonging to entities with hidden direct or indirect links to the CIA. The Italian prosecution service has even issued arrest warrants against CIA agents after the violent abduction of a Muslim, Abu Omar, in a Milan street in February 2003. The German judicial authorities are taking part in the investigation and have themselves begun investigating the case of a German citizen of Lebanese origin, Khaled al Masri. After being arrested by mistake in Macedonia he was reportedly taken to Kabul for interrogation<sup>5</sup>. Lastly, a Spanish judge is enquiring into whether the CIA used San Joan airport in Majorca as a base for transport of Muslim suspects, as announced by the Spanish minister of internal affairs, José Antonio Alonso, on 15 November 2005. The same aircraft as transported Abu Omar landed at least three times in Spain (and in other European countries).

26. The Polish Government ordered an enquiry into the alleged existence in Poland of secret CIA detention centres. The findings were to have been made known in December, but so far none have been published (although a parliamentary committee had been informed of these findings). On 21 December 2005, I wrote to the head of the Polish delegation to the Parliamentary Assembly, Mr Iwinski, asking him to let me have the findings as soon as possible.

<sup>5</sup> A reporter working for the German television channel ZDF, Mr Brase, has passed onto me a certain amount of information and contact details of people involved locally, which I shall follow up in the next stages of my own enquiry.

27. On 6 December 2005, at the instigation of the opposition, the Romanian Parliament set up a commission to investigate the alleged existence of a secret detention centre on Romanian territory which the American secret services were said to have used for torture. A non-governmental human rights organisation (OADO – Organizația Pentru Apărarea Drepturilor Omului) sent specialists to all the places specifically mentioned in recent months as possible sites of secret detention centres. Their conclusions do not seem to provide any evidence of such centres. Traces of destroyed temporary structures are visible near Babadag training camp, Fetești airbase and Mihail Kogălniceanu army base, but seemingly they were used in connection with international military exercises. In the 2003-2005 period, American military personnel in transit were apparently accommodated there in May and June 2003. OADO stresses the absence of any basis for the allegations. On 20 January 2006 the head of the Romanian delegation to the Assembly wrote to me forwarding his delegation's replies to my 19 December 2005 questionnaire to heads of PACE delegations. The replies give general information about agreements between the United States and Romania on secret-service co-operation and NATO agreements. The bilateral agreement signed on 6 December 2005 (and not yet ratified) provides in its preamble that the parties are to respect national sovereignty, the United Nations Charter, human rights and their international obligations. The replies stress that no official Romanian authority was aware of any secret detention centre on Romanian territory. Nor have the Romanian authorities received any request for overflight of Romanian territory or use of Romanian airports by aircraft suspected of belonging to the CIA. They also state that military airfields have not been used by civil aircraft. The government has not asked for any further explanations, saying that it is satisfied with those given by Condoleezza Rice.

28. In the United Kingdom the NGO Liberty threatened the government with legal action for facilitating and colluding in use of torture if there was not an immediate enquiry into the very large number of flights and overflights by CIA-chartered planes and the possible use of certain United Kingdom airports. In reply to a parliamentary question on the subject, the United Kingdom foreign affairs minister, Jack Straw, stated in December 2005 that a thorough search of the relevant logs had not found any CIA request to use British airports in connection with transport of suspects. According to an internal memorandum dated December 2005, attributed to the private office of the foreign affairs minister and published by the *New Statesman* on 19 January 2006, the British Government intends to take the following approach to the problem: extraordinary renditions are usually illegal, but complete confidence should be placed in the assurances provided by Ms Condoleezza Rice during her trip to Europe. The British press made a point of accusing the Government of duplicity. It remains to be seen whether the memorandum does indeed reflect the Government's official attitude. On 20 January I also received, from Mr Angus Robertson MP, a detailed report of numerous suspect movements of aircraft transiting through Scotland.

29. Further to questions to the government in the Bundestag from the leftwing and Liberal groups, the German Government asked the American authorities for information about CIA use, or not, of Frankfurt and Ramstein airports. In answer to most of the questions from the two groups, the government stated that it could provide replies only to the committee specially authorised to oversee the secret services. Asked whether the government or the German secret services knew of the existence of any secret detention centres on German or European territory, the government categorically denied any knowledge of such centres on national territory; with regard to the remainder of the question, it referred to its objection of principle that it was the special committee which had jurisdiction in the matter. In answer to a question from the leftwing group, the German air traffic safety office provided a detailed list of flights by two aircraft apparently chartered by the CIA which had landed at airports in Germany in 2002 and 2003, 137 and 146 times respectively and mainly at Frankfurt, Berlin and the US Ramstein base. However, the office was unable to provide the members of parliament with information as to the identity of any passengers. On 17 January 2006 the German members of parliament decided to set up a committee of enquiry to report back as soon as possible on the role of the intelligence services (BND) in Baghdad and on certain aspects of anti-terrorist action (including allegations of flights and overflights of German territory by CIA-chartered aircraft). Discussions are still under way as there seem to be

misgivings in some political circles about setting up a committee that might undermine the operational capacity of the BND.

30. The Armenian parliamentary delegation forwarded to the head of internal security services the questionnaire which was sent on 19 December 2005 to heads of national delegations to the Parliamentary Assembly. The replies received shed no further light.

31. In response to parliamentary questions, the Belgian Government has launched an enquiry into flights and over-flights by CIA-chartered aircraft. So far, no stopover at a military airport has been discovered.

32. With regard to Bosnia and Herzegovina, their American lawyer<sup>6</sup> has sent me a detailed account of the case of six Bosnians abducted by American agents on Bosnian soil and taken to Guantánamo Bay, despite a Bosnia and Herzegovina Federal Supreme Court judgment ordering their release after police investigation had failed to uncover the slightest evidence against them. I shall be following developments in the case as part of my further investigations.

33. In a letter dated 19 January 2006, the leader of the Cypriot delegation to the Assembly forwarded to me his government's replies to the questionnaire I sent to the leaders of national delegations to the Assembly on 19 December 2005. The replies mention several landings in Cypriot airports, all of a technical nature (and therefore not subject to authorisation), of aircraft on the list forwarded to national delegations. The Cypriot Government states that it has no knowledge of secret detention centres on the part of national territory that is actually controlled by the Republic of Cyprus. It stresses that it is in its interests that full light should be shed on the matter and that it intends to use diplomatic channels to obtain explanations from the American authorities.

34. The Danish Government has asked the American authorities for explanations about CIA-chartered flights for alleged transport of prisoners over Danish territory.

35. The Finnish security services have reportedly asked the CIA for information about any passengers aboard a cargo plane which made a stop at Helsinki in 2003.

36. The French foreign affairs ministry has stated that it is checking with the civil aviation authorities on two flights which made stops in French territory and had apparently been chartered by the CIA.

37. In reply to a question from a European Parliament member, Greece is looking into the alleged existence of a secret prison at Souda naval base in Crete where persons suspected of involvement in the attacks on the London underground were allegedly subjected to violent interrogation by British agents.

38. The head of the Irish delegation to the Parliamentary Assembly informed me of the many questions to the government in the Irish Parliament, and of the replies received. In substance, the government expressed total condemnation of the practice of "extraordinary renditions" and stated that it had never authorised any overflights of Irish territory by chartered aircraft for that purpose.

<sup>6</sup> Stephen H. Olaskey, of the law company WilmerHale.

39. The Norwegian Government apparently asked the American embassy for information about a plane which landed at Oslo on 20 July 2005 and was allegedly used by the American authorities for transport of suspected extremists.

40. The Swedish Government has instructed the relevant department and the civil aviation authority to look into flights to and from Swedish airports by United-States-registered aircraft since 2002.

ii. *The more detailed cases of Italy and Switzerland*

• *Italy*

41. At midday on 17 June 2003 an Egyptian citizen, Hassam Osama Mustafa Nasr, known as Abu Omar, was abducted in the middle of Milan. Thanks to an outstanding and tenacious investigation by the Milan judiciary and the DIGOS police services, Abu Omar's is undoubtedly the best known and best documented case of "extraordinary rendition"<sup>7</sup>.

42. Via the military airbases at Aviano (Italy) and Ramstein (Germany) Abu Omar was flown to Egypt, where he was tortured before being released and re-arrested. To my knowledge no proceedings were brought against Omar in Egypt.

43. The Italian judicial investigation established, beyond all reasonable doubt, that the operation was carried out by the CIA (which has not issued any denials). The Italian investigators likewise established that the presumed leader of the abduction operation – who had worked as the American consul in Milan – was in Egypt for two weeks immediately after Omar was handed over to the Egyptian authorities. It may safely be inferred that he took part, in one way or another, in Omar's interrogation.

44. The proceedings instituted in Milan are concerned with 25 American agents, against 22 of whom the Italian authorities have issued arrest warrants.

45. Abu Omar was a political refugee. Suspected of Islamic militancy, he had been under surveillance by the Milan police and judicial authorities. As a result of the surveillance operation, the Italian police were probably on the point of uncovering an activist network operating in northern Italy. Abu Omar's abduction, as the Milan judicial authorities expressly point out, sabotaged the Italian surveillance operation and thereby dealt a blow to anti-terrorist action.

46. Is it conceivable or possible that an operation of that kind, with deployment of resources on that scale in a friendly country that was an ally (being a member of the coalition in Iraq), was carried out without the national authorities – or at least Italian opposite numbers – being informed? The Italian Government has denied having been informed. The presence on Italian territory of at least 25 foreign agents who abducted someone who had been granted political asylum and was already under police surveillance might have been expected, if not to create a diplomatic incident, then at least to trigger a sharp response from the national authorities. As far as I know, there was no such response. A further interesting point is that the Italian justice minister has so far not forwarded to the American authorities the Milan judicial authorities' requests for assistance and extradition.

<sup>7</sup> I have met the prosecutor who headed the investigation, Armando Spataro, and was able to obtain as full information as confidentiality and procedural requirements permitted. The Abu Omar case is likewise described in the book, already referred to, by the *Corriere della Sera* journalist Guido Olimpio, *Operazione Hotel California*, Feltrinelli, October 2005.



47. Abu Omar's abduction is a perfect illustration of "extraordinary rendition". It is a clear indication that the method exists, together with complex logistic support in various parts of Europe and considerable deployment of personnel. It also plants doubts and raises the question of involvement of national authorities at one or other level.

#### Switzerland

48. The methods used to counter the terrorist threat are also under debate in Switzerland.

49. In May 2002 an American citizen, José Padilla, was placed under close surveillance by the Swiss federal police and US agents when he flew into Zurich from Pakistan. Padilla was suspected of wanting to introduce a "dirty" bomb into the United States and explode it. Apparently the Swiss police even questioned him before he flew on to Chicago, where he was arrested. Since then Padilla has been in detention without any detailed charges being brought against him and is considered an "enemy combatant". It was only quite recently that he was handed over to the civil justice authorities to avoid the Supreme Court's ordering his release. Visiting Switzerland in June 2002, the United States justice minister, John Ashcroft, warmly congratulated the Swiss authorities on the valuable part they had played in Padilla's arrest. However, the case has sparked controversy in Switzerland, to such an extent that a parliamentary committee has begun an enquiry, for it would seem that the police co-operated closely with the American services without notifying the competent judge, or at any rate informed him after the event, when Padilla had already been arrested in the United States. If notification had been made in time – as procedure requires – Padilla would most likely have been arrested and handed over to the American authorities in accordance with the procedure laid down and with the safeguards which operate in cases of judicial assistance and extradition (which are not applied to so-called "enemy combatants"). My request to consult the parliamentary committee's report was refused on the justice ministry's advice, on the ground that the file contained material "concerning third parties and potentially harmful to relations with another country".

50. In June 2005 the Swiss press, in connection with what it called the "Guantánamo Express", mentioned several aircraft which had temporarily landed in Switzerland and were suspected of carrying prisoners. On a visit to the United States in late June 2005, the Swiss foreign affairs minister asked his opposite number for explanations. To date, and despite a repeat request to the United States ambassador in Bern in December, no reply has been forthcoming from the American authorities.

51. The Egyptian Abu Omar, abducted by the CIA in Milan on 17 February 2003 (see the above section on Italy), was flown from the Italian base at Aviano to Ramstein in Germany, and then on to Cairo. The Italian judicial authorities have identified the aircraft used. The data, when compared with data held by Swiss air traffic control, indicate that he was flown through Swiss air space, which has prompted the federal prosecution authorities to institute an enquiry (the prosecution authorities at Zweibrücken, within whose jurisdiction the Ramstein base is located, have done likewise).

52. On 8 January the Swiss newspaper *Sonntagsblick* stated that, during the night of 11 to 12 November 2005, the Swiss intelligence services intercepted a fax from the Egyptian European affairs ministry to the Egyptian embassy in London referring to the existence of secret detention centres in Romania, Bulgaria, Ukraine, Macedonia and Kosovo. The newspaper published a copy of a Swiss departmental memorandum (in French) dated 14 November 2005 summarising the content of the original message intercepted (probably in Arabic). It was from the newspaper article that I discovered the content of the intercepted fax. Interception of the Egyptian fax has not been denied by the parties concerned. On the contrary the Swiss authorities are investigating the breach of official secrecy.

53. The foreign affairs minister stated in an interview published on 15 January 2006 that the Swiss authorities would co-operate with me "as far as possible".

#### B. Debate in North America

54. In the United States, the authorities' attitude in the war on terrorism and the controversial methods used by the CIA in that connection have also aroused controversy.

55. The CIA action programme set up after 11 September 2001 and known as the "GST programme", gives the CIA greatly enhanced powers (apparently comparable to those which existed during the cold war). It allows the CIA to arrest suspects with the help of foreign internal security services, hold them captive abroad, employ interrogation techniques (some of which are very widely regarded as possibly contravening the United States' international undertakings regarding prohibition of torture) and fly prisoners between countries<sup>8</sup>.

56. The facts as reported by several official sources point to highly controversial practices on the part of the American security services.

57. Several prominent figures have openly condemned the practices in question. One can but welcome the perseverance shown by Senator John McCain, who was himself a torture victim in Vietnam and who was responsible for an amendment to the 2006 defence expenditure bill expressly prohibiting cruel, inhuman and degrading treatment of foreign prisoners, whether in CIA hands, in the United States or abroad. The amendment is extremely significant in the context of my report, implying that such treatment was not hitherto prohibited by American law in the circumstances referred to. It also strikes me as fairly revealing that Vice-President Dick Cheney fought, unsuccessfully, to have the McCain amendment not apply to the CIA. However, we cannot be altogether confident of the effects the amendment will have – the press reports that President Bush seems to reserve the right to disregard the amendment in certain circumstances<sup>9</sup>.

58. Similarly, extension of the Patriot Act was agreed to only after fierce debate and resistance in the Senate, and only for six months (during which period it is hoped to make its content more flexible). The fact is that a large number of senators regard the provisions of the Act, which was adopted in the wake of 11 September 2001 and is concerned, in particular, with empowering the FBI to secretly obtain information on telecommunications, as placing undue restrictions on citizens' rights and freedoms.

59. The uproar in the United States over telephone taps which President Bush has authorised, apparently without any legal basis whatever, can only reinforce that sentiment. The revelation by *The New York Times* has further fuelled present controversy.

60. Amnesty International (AI) expressed serious concern about the attitude adopted by the Canadian authorities. As suspect flights had been reported over the country, AI asked the authorities on 22 November 2005 to look into the matter. In an open letter to the Minister of Public Safety and Emergency Preparedness dated 18 January 2006, AI observes that there has still been no serious investigation into these allegations. We have no doubt that Canada, a permanent observer to the Assembly, will shed full light on the allegations.

<sup>8</sup> Dana Priest, "Covert CIA Program Withstands New Furor – Anti-Terror Efforts Continue to Grow", *The Washington Post*, 30 December 2005.

<sup>9</sup> Charlie Savage, "Bush could bypass new torture ban – Waiver right is reserved", *The Boston Globe*, 4 January 2006.

**D. Reminder: anti-terrorist action must respect human rights**

61. The Parliamentary Assembly has made its position very clear, which is that it shares "the United States' determination to combat international terrorism and fully endorses the importance of detecting and preventing terrorist crimes, prosecuting and punishing terrorists and protecting human lives"<sup>10</sup>.

62. Obviously that position is the only possible one and, as far as action on terrorism is concerned, requires close international co-operation, which, however, must be organised on the basis of clear, precise agreements and in compliance with agencies' powers and responsibilities.

63. "Rendition" of prisoners must be carried out in accordance with legal procedure, so that the prisoner is afforded all the legal guarantees to which he or she is entitled, including a fair trial within a reasonable time. In no case should it be made possible for a person to be returned or transferred "in reliance on 'diplomatic assurances' from countries known to engage in the systematic practice of torture and ... unless the absence of a risk of ill-treatment is firmly established"<sup>11</sup>.

64. It cannot be overemphasised that nothing and no one can justify waiving the principles of the rule of law and respect for human rights and that torture, in addition to being an unreliable way of obtaining information, is in any case absolutely prohibited.

65. As the Assembly has stated, "some human rights (such as the right to be protected from torture or inhuman treatment) are absolute, and should never be interfered with by state authorities, including internal security services."<sup>12</sup> Secret services' role, however fundamentally important to counter-terrorist action, clearly can never place such services above the law.

**E. Preliminary analysis of the information already obtained**

**a. Awareness of Council of Europe member states?**

66. "Rendition" affecting Europe seems to have concerned more than a hundred persons in recent years<sup>13</sup>. Hundreds of CIA-chartered flights have passed through numerous European countries<sup>14</sup>. It is highly unlikely that European governments, or at least their intelligence services, were unaware. And a number of revelations have already been published by the press, especially in America, over the past few years. It is, to say the least, curious that media interest, especially in Europe, suddenly surged after the article in *The Washington Post* in early November 2005.

<sup>10</sup> Resolution 1433(2005) on the lawfulness of detentions by the United States in Guantánamo Bay, §1.

<sup>11</sup> Idem, §8.x.

<sup>12</sup> Recommendation 1402(1999) on control of internal security services in Council of Europe member states, §4.

<sup>13</sup> Michael Scheuer, writing in *Die Zeit* of 29 December 2005, referred to "hundreds, but not thousands" of persons held by the United States in the context of "rendition".

<sup>14</sup> According to a list obtained from Germany's Office for Air Traffic Safety by the Left Party group in Germany, two aircraft linked to the CIA had landed at airports within Germany in 2002 and 2003, 137 and 146 times respectively. I dare not extrapolate the number of potentially suspect flights in all Council of Europe member states during the period under examination by the 40 aircraft allegedly linked to the CIA!

67. The statements made by Secretary of State, Condoleezza Rice, during and before her European visit of December 2005, and by her predecessor, Colin Powell, who said that the US had always respected the national sovereignty of its allies, are taken by some as both a reprimand and a warning: "stop being hypocritical", and "do you really want us to say what happened?".

68. In the case of Abu Omar it was obvious that the CIA acted without informing the Italian judicial and police authorities. The Milan public prosecutors explicitly state that the action taken by the American service, which they consider constituted a criminal offence, prevented them from competing investigations which they were conducting against Omar and which was on the verge of identifying a network of activists considered potentially dangerous. The Italians' meticulous and highly professional work had thus been undone by the unexpected intervention by CIA agents who, by abducting Abu Omar, had sabotaged a major anti-terrorist operation. This "rendition" is a glaring illustration of the fact that such actions, which infringe the principles of the rule of law, are not only unacceptable from the legal and ethical point of view but also ineffective, or indeed damaging to the fight against terrorism. This lack of co-operation with and confidence in the authorities officially mandated to fight crime is bound to have very serious consequences, challenging the very functioning of the law-based State and its democratic foundation. Similarly, we might add that the American authorities in Ramstein are refusing to co-operate with the German prosecutor responsible for the German strand of the Abu Omar case, on Washington's orders. It is difficult to believe that such an approach to relations between authorities in different countries can provide any valid basis for genuine co-operation among States endeavouring together to combat the worst threats facing us in modern times.

**b. Extraordinary rendition and torture – a link known and accepted?**

69. Over the last few months, a number of former officials of the American intelligence services, some of whom had held responsible positions, have given interviews and provided many details of the resources used against actual and suspected terrorists. These statements, which have in fact been corroborated by indiscretions from officials still serving, clearly confirm that the current US Administration seems to start from the principle that the principles of the rule of law and human rights are incompatible with efficient action against terrorism. Even the laws of war, especially the Geneva Conventions, are not accepted or applied. The relocation of prison camps to Guantanamo and elsewhere indicates that even American legal standards are seen as obstacles by the US Administration. "Extraordinary rendition" and secret detention facilitate the use of degrading treatment and torture. It is even the stated objective of such practices, as the following quotations would appear to confirm.

70. Mr Michael Scheuer, one of the architects of the "rendition" system further developed during the Presidency and with the agreement of Bill Clinton, formerly headed the CIA's Bin Laden unit. He stated in an interview with *Die Zeit*<sup>15</sup> that the CIA was within its rights to break all laws except American law. He expressed doubt as to the existence of secret prisons in eastern Europe, given the fact that the US had, in his opinion, sufficient capacity in other places, particularly in Iraq and Cuba.

71. In another interview, given to the *Sunday Herald* in October 2005, Mr Scheuer is reported to have said, on the subject of his knowledge of the use of torture, that he had no doubt about this and that the White House was more willing than the CIA itself to ignore the legal details ("to turn a blind eye to the legal niceties"). The CIA was aware that it would eventually have to take the blame ("The Agency always knew it would be left holding the baby for this one")<sup>16</sup>.

<sup>15</sup> *Die Zeit*, 29 December 2005.

<sup>16</sup> Neil Mackay, "These two men are experts on rendition: one invented it, the other has seen its full horrors", *Sunday Herald* (Scotland), 16 October 2005, available at <http://www.sundayherald.com/52305>.

72. As early as March 2005, in a CBS interview, Mr Scheuer had admitted knowing that suspects were tortured in Egypt, adding that it was "very convenient" finding "someone else to do your dirty work"<sup>17</sup>.

73. Mr Robert Baer, a former CIA agent interviewed by British journalist Stephen Grey, is reported to have said: "If you want a serious interrogation, you send a prisoner to Jordan. If you want them to be tortured, you send them to Syria. If you want someone to disappear - never to see them again - you send them to Egypt."<sup>18</sup>

74. Mr Vincent Cannistraro, former head of counter-espionage in the CIA is reported to have said that a Guantánamo detainee suspected of belonging to Al-Qaeda and who was refusing to co-operate provided better information after being "rendered" to Egypt: "They promptly tore his fingernails out and he started to tell things"<sup>19</sup>. Mr Cannistraro also reportedly said that Egyptian prisons were full of men without finger and toenails. "It's crude, but highly effective, although we could never condone it publicly. The Egyptians and Jordanians are not that squeamish"<sup>20</sup>. Lastly, he also said that only someone "deaf, dumb and blind" could believe that the Syrians did not use torture, despite their claims to the contrary<sup>21</sup>.

75. Some officials who have remained nameless have given even more direct evidence. A CIA member directly involved in "renditions", for instance, was quoted by *The Washington Post* back in December 2002 as saying "We don't kick the [expletive] out of them. We send them to other countries so they can kick the [expletive] out of them"<sup>22</sup>.

76. "If you don't violate someone's human rights some of the time, you probably aren't doing your job": this was allegedly said by one official who had supervised the capture and transfer of alleged terrorists<sup>23</sup>.

77. Another official directly involved in "renditions" said that he knew the persons concerned would probably be tortured ("I ... do it with my eyes open")<sup>24</sup>.

<sup>17</sup> Ibid.

<sup>18</sup> Stephen Grey, "America's Gulag", *The New Statesman*, 17 May 2004, available at <http://www.newstatesman.com/200405170016>.

<sup>19</sup> Knut Royce, "Mixed Reviews from Experts. Critics: Make Case on Deceit, Not Terror", *Newsday*, 6 February 2003.

<sup>20</sup> Ian Bruce, "Middleman Reveals Al Qaeda Secrets", *The Herald* (Scotland), 17 October 2002.

<sup>21</sup> Shannon McCaffrey, "Canadian Sent to Syrian Prison Disputes U.S. Claims against Torture", *Knight-Ridder*, 1 August 2004.

<sup>22</sup> Dana Priest and Barton Gellman, "U.S. Decries Abuse but Defends Interrogations", *The Washington Post*, 26 December 2002, available at <http://www.washingtonpost.com/ac2/wp-dyn/A37943-2002Dec25?language=printer>; also see Doc. 10497, report of the Committee on Legal Affairs and Human Rights on the lawfulness of detentions by the United States in Guantánamo Bay, rapporteur Kevin McNamara.

<sup>23</sup> Ibid.

<sup>24</sup> Ibid.

78. Some officials of President Bush's administration have said that the CIA in practice uses a narrow definition of what amounts to "knowing" that a suspect has been tortured: "If we're not there in the room, who is to say?"<sup>25</sup>

79. Another case of rendition concerns a so-called Muslim militant in Canada, called Arar. Some American officials speaking on condition of anonymity are reported to have said that there was strong evidence that Mr Arar had long been associated with suspected Islamist militants in Canada. They reported that he had confessed under torture in Syria that he had received terrorist training in Afghanistan, and had given the names of his instructors and other details<sup>26</sup>.

80. Others reportedly told *Time* that no American had been in the room in which the Syrians interrogated Mr Zammar. American officials in Damascus gave written questions to the Syrians, who passed back Zammar's answers. State Department officials appreciated this arrangement, which kept the American government out of any torture that the Syrians might use against him. Some State Department officials suspected that he had indeed been tortured<sup>27</sup>.

81. In an interview with Dana Priest (*The Washington Post*) published in March 2005, another CIA official involved in "renditions" described other countries' "assurances" as "a farce"<sup>28</sup>, and admitted that it was widely understood that interrogation practices that would be illegal in the United States were being used<sup>29</sup>. In the same interview, he said that "They say they are not abusing them, and that satisfies the legal requirement, but we all know they do"<sup>30</sup>.

82. It seems, furthermore, that the CIA's partners quite clearly understand the worse than ambiguous attitude it takes to the use of torture; one Arab diplomat from a country actively involved in anti-terror operations and sharing intelligence with the CIA reportedly said that it was unrealistic to believe that the CIA really wanted to verify the assurances given: "It would be stupid to keep track of them because then you would know what's going on [...] It's really more like 'Don't ask, don't tell.'"<sup>31</sup>.

83. In this context, it can be noted that in May 2005 the U.N. Committee against Torture held that the 1984 U.N. Convention against Torture had been violated by Sweden with respect to the removal, to Egypt, of Ahmed Agiza and Mohammed al-Zari, back in December 2001 (see *Agazi v. Sweden*, CAT/C/34/D/233/2003 of 24 May 2005).

84. Another case concerning a certain Mr Mahdoudh Habib, Australian citizen arrested in Pakistan in October 2002, is prompting debate in Australia, highlighting the legal difficulties arising out of the use of torture: "After promising for more than three years that it would charge Mr. Habib, the Bush administration told the Australians in January that it would not prosecute him because the C.I.A. did not want the evidence about Mr. Habib being taken to Egypt, and his allegations of torture, raised in court", Australian officials reportedly said<sup>32</sup>.

<sup>25</sup> Ibid.

<sup>26</sup> Clifford Krauss, "Qaeda Pawn, U.S. Calls Him; Victim, He Calls Himself", *New York Times*, 18 November 2003.

<sup>27</sup> Mitch Frank, "Help from an Unlikely Ally", *Time*, 1 July 2002.

<sup>28</sup> Dana Priest, "CIA's Assurances on Transferred Suspects Doubted", *The Washington Post*, 17 March 2005, available at <http://www.washingtonpost.com/wp-dyn/articles/A42072-2005Mar16.html>

<sup>29</sup> Ibid.

<sup>30</sup> Ibid.

<sup>31</sup> Ibid.

<sup>32</sup> Raymond Bonner, "Australians Uneasy About U.S. detainee case", *New York Times*, 10 April 2005.

85. Drawing on all this concordant information and evidence we can say that there is a great deal of coherent, convergent evidence pointing to the existence of a system of "relocation" or "outsourcing" of torture. Acts of torture, or severe violations of detainees' dignity through the administration of inhuman or degrading treatment, are carried out outside national territory and beyond the authority of the national intelligence services. Does this mean that torture is so easy to use in this day and age? Is it enough for one's own secret services not to be physically present at the place of interrogation and to pretend to have no official knowledge of this practice to state that the law is not being broken? In this context, the statements made by Mr Schäuble, Germany's new Minister for the Interior, appear at the very least highly debatable, if not alarming. He seems to consider that the use of information obtained by dubious means is acceptable, provided that the German services were not perpetrating acts of torture themselves<sup>33</sup>.

86. Did such pointers to the existence of "networked" torture really escape the notice of Council of Europe member states? What is, therefore, the share of responsibility of member states when their airport facilities are used to transport detainees to places where they will be subjected to torture, ie places – dare I say – of public notoriety? Is there true co-operation between European states and the United States, or do the former display a respectable kind of duplicity?

87. These assumptions are obviously very serious, but all these questions require plain, honest answers. The opinion to be delivered by the Venice Commission in March 2006 will give us a clearer view of the legal consequences of these practices, including member States' responsibility in the light of the international treaties and the rules of general international law to which they are subject.

88. With specific reference to the awareness among member states' authorities of torture committed by their "partners" in the context of the fight against terrorism, we shall hear a personal account at our Committee's meeting of 24 January 2006 from Mr Craig Murray, former British Ambassador to Uzbekistan. The documents that he has already forwarded to me, and which led me to invite him to give his evidence, appear to be damning for the UK authorities, which seem to have knowingly continued to make use of information obtained under torture and supplied by the Uzbek intelligence services, thereby encouraging the practice of torture. Mr Murray was unable to persuade his authorities to cease doing so, and therefore resigned.<sup>34</sup>

89. Allegations have just been published to the effect that some German executive authorities had themselves, during co-operation with the American FBI, "outsourced" acts of torture, in collusion with the Lebanese and Syrian services. These allegations are currently being checked, and in the light of the statements quoted above such verification would appear necessary and urgent.

#### c. Secret detention centres

90. At this stage of the investigations, there is no formal, irrefutable evidence of the existence of secret CIA detention centres in Romania, Poland or any other country. Nevertheless, there are many indications from various sources which must be considered reliable, justifying the continuation of the analytical and investigative work. The information requested from the European Union Satellite Centre and from Eurocontrol should be supplied and evaluated in the very near future. The Egyptian message intercepted by the Swiss services, the authenticity of which is no longer in doubt, contains nothing very new, but it does nonetheless point to a different source regarding the existence of these centres. The Egyptian services have a reputation for efficiency, and there is a great deal of evidence to the effect that they have engaged in very active co-operation in carrying out these renditions.

<sup>33</sup> Spiegel online, 16 December 2005; see also the opposite stance adopted by the President of the Constitutional Court, Mr Papier, in the *Handelsblatt*, 26 December 2005.

<sup>34</sup> See in this context the judgment of the House of Lords of 8 December 2005 confirming that information obtained under torture cannot be used in evidence before the courts.

**d. Kosovo and Chechnya**

91. Where Kosovo is concerned, the KFOR detention centre (Camp Bondsteel) is not "secret" in so far as its existence has been well-known for a long time now. Back in 2002 the Commissioner for Human Rights, Mr Gil-Robles, reported on his findings *in situ*. At the hearing with our committee on 13 December 2005 the Commissioner for Human Rights repeated that the Kfor detention centre had "many parallels with Guantanamo: prisoners arrested without recourse to any kind of judicial procedure or legal representation". Nor is Camp Bondsteel open for inspection by the Council of Europe's Committee for the Prevention of Torture (CPT), which has the right to inspect all places of detention in States Parties to the European Convention for the Prevention of Torture (including Serbia and Montenegro), and which has not hitherto obtained authorisation to visit. Negotiations are in progress with KFOR.

92. Where Chechnya is concerned, Mr Bindig's report, which is to be discussed in the plenary sitting of 25 January, reports on numerous cases of "enforced disappearances" and torture, as well as the existence of secret places of detention, all strongly criticised by the CPT in two public statements to which I referred in my December 2005 introductory memorandum, and which are still waiting to be given their due importance by the Committee of Ministers of the Council of Europe.

**F. Looking ahead to the continuing investigation**

93. The replies from Eurocontrol and the European Union Satellite Centre would appear to be imminent, as the Romanian authorities have now agreed supply satellite photographs of places located on their territory. We will not be able to pronounce on the importance and the scope of this information until a later juncture.

94. The factual elements secured to date, thanks *inter alia* to the action of the Council of Europe, have induced the European Parliament to set up a temporary special committee responsible for investigating any possible unlawful action taken in the context of the fight against terrorism in the European Union member or applicant States. This decision underscores the seriousness of the evidence secured so far. It is felicitous that other international institutions are also dealing with these issues, and the Council of Europe and its Rapporteur will obviously fully co-operate with them.

95. We should also mention the remarkable work being done by various NGOs and numerous investigatory journalists. Such journalists symbolise the commitment of a community which is determined to ascertain the truth and will not allow the fight against terrorism, which is absolutely vital, to justify using unspeakable methods, thereby raising the threat of a lapse into barbarity. Consequently, the officials who are well aware of the fact and who in all conscience cannot accept these methods, provide a major channel for ascertaining the truth. These officials face two contradictory imperatives, namely official secrecy and the ethical duty not to collude in acts infringing human dignity. In this context, whistle-blowing is the expression of civil commitment and courage, rather than an act of denunciation or betrayal.

96. The replies which the Council of Europe's member States must supply under the procedure set out in Article 52 of the European Convention on Human Rights must reach the Secretary General by 21 February 2006. These replies will provide additional material for assessing the situation.

97. Similarly, the legal opinion requested from the Venice Commission will be very important for the conclusions of the final report, particularly in terms of the Council of Europe member States' obligations under the European Convention on Human Rights in order to ensure that their territory, and even their airspace, are not misused, even by friendly and allied third states, for the purposes of human rights violations. National procedures for parliamentary supervision of intelligence services will have to be analysed and, where necessary, improved, in order to ensure that abuse cannot be perpetrated on the pretext of the confidentiality of current procedures. Parliamentarians must also analyse the repeated



recourse by executives authorities to the concepts of "State secrecy" and "higher interests" in withholding information.

98. My experience as the Assembly's rapporteur on this particularly sensitive and substantial subject also makes me wonder about the resources at the Parliamentary Assembly's disposal for conducting this kind of inquiry. When national procedures cannot appropriately deal with investigations into possible human rights violations which are more than individual cases (for which the European Court of Human Rights has jurisdiction) and which transcend borders, we are justified in wondering whether the current instruments are still equal to the task. Instead of one single member as Rapporteur with the support of the normal resources of the Committee's secretariat, already overwhelmed by other current reports, we might seriously consider whether setting up a true committee of inquiry, assisted by experts and holding more extensive investigatory powers, might not be a better solution and more able to deal with these new important challenges.

99. As we have said, no cogent evidence has yet emerged on the existence in Europe of detention camps like the one at Guantanamo Bay. On the other hand, it has been proved (and in fact never denied), that individuals have been abducted, deprived of their liberty and all rights, and transported to different destinations in Europe, to be handed over to countries in which they have suffered degrading treatment and torture. This is serious enough to justify the continuation of the Council of Europe's inquiries and strenuous efforts from all member States to ascertain the truth.

100. There is a heated public debate in America on the requisite resources for fighting terrorism. The fact that detention and interrogation centres have been relocated to other countries is proof that the authorities are fully aware that the methods used are incompatible with the American legal system. Europe must clearly and unambiguously declare that it refuses outright to tolerate such doings in its territory, or anywhere else.

101. It is equally unacceptable and appalling to ease one's conscience by delegating such tasks – illegal secret detention and use of torture – to third countries (which have long been the target of high-profile specific and repeated denunciations of very serious human rights violations and the lack of any kind of democratic control).

102. In fact, we must go beyond ascertaining the existence or non-existence of secret detention centres in Europe. The issue at stake is even more important than that. The current US Administration obviously considers that the traditional instruments of the democratic State governed by the rule of law – justice, constitutional guarantees of a fair trial, respect for human dignity – are inappropriate for facing up to the terrorist threat. Persons assumed to be terrorists are therefore arrested, interrogated, deported and detained without any rights or safeguards, thus accepting the concrete and inevitable risk of subjecting completely innocent people to such treatment (inside the CIA an internal inquiry is reportedly under way into several cases of individuals who were abducted, imprisoned and tortured, before it emerged that the wrong people had been targeted). Is Europe prepared to accept such an approach? Can we really say that human rights are an obstacle to national security? Can there be any real security without respect for human dignity?

103. The safety and security of citizens and the fight against the terrorist threat are undeniable fundamental priorities for democracies and an immense challenge to the State founded on the rule of law. In a remarkable judgment handed down in June 2004, the US Supreme Court used the following very clear terms: "The point at issue in this case is nothing less than the essence of a free society. If this nation is still attached to the ideals symbolised in its flag, it must not use the weapons of tyrants to resist an attack by the forces of tyranny". Frank, open dialogue between the institutions on both sides of the Atlantic is necessary, indeed absolutely vital, if we wish to implement the most effective means of combating the new threats facing us. This can only be achieved if one side answers the questions and the other is genuinely prepared to ask them.

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*Update: 23.01.06*

On 23<sup>rd</sup> January 2006, the Rapporteur received information from both the EU Satellite Center and Eurocontrol. He will now undertake an analysis of the information (satellite pictures, flights records) provided.